



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT

Not reportable

Case no: 1046/2023

In the matter between:

HASHTAG MOVEMENT

APPELLANT

and

ETHIOPIAN CHURCH OF SOUTH AFRICA

FIRST RESPONDENT

JOHNSON SIBONDA LUPHUWANI

SECOND RESPONDENT

SANDILE ZONDI

THIRD RESPONDENT

ENOCK VUSUMUZI MDLALOSE

FOURTH RESPONDENT

ANNA MAROSHA

FIFTH RESPONDENT

SIBUSISO AGRICOLIST STHEBE

SIXTH RESPONDENT

KINGDOM ZWELINJANI KHANGELANI

NDLOVU

SEVENTH RESPONDENT

ALFRED MILINDENI MZILA

EIGHTH RESPONDENT

SONWABO DLULA

NINTH RESPONDENT

ZINGISILE NGQAMSHOLO

TENTH RESPONDENT

TSHEPO ERROL TSOANYANA

ELEVENTH RESPONDENT

SOLOMON SERAME NNETE

TWELFTH RESPONDENT

MBULELO GQAJI

THIRTEENTH RESPONDENT

DESMOND MTHETHELELE

GABONI

FOURTEENTH RESPONDENT

Neutral citation: *Hashtag Movement v Ethiopian Church of South Africa and Others* (1046/2023) [2023] ZASCA 173 (8 December 2023)

Coram: PETSE DP, MATOJANE and GOOSEN JJA and BINNS-WARD and MASIPA AJJA

Heard: 28 November 2023

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email, published on the Supreme Court of Appeal website, and released to SAFLII. The date and time for hand-down is deemed to be 11h00 on 8 December 2023.

Summary: Automatic appeal in terms of s 18(4) of Superior Courts Act 10 of 2013 – order made by a single judge of a High Court – appeal lies to the full court of the Division as next highest court – this Court lacks jurisdiction – appeal struck from the roll.

ORDER

On appeal from: Eastern Cape Division of the High Court, Bhisho (Matebese AJ, sitting as court of first instance):

The appeal is struck from the roll with costs, including the costs of two counsel.

JUDGMENT

Goosen JA (Petse DP, Matojane JA and Binns-Ward and Masipa AJJA concurring):

[1] On 28 November 2023, this Court heard argument in an appeal prosecuted in terms of s 18(4) of the Superior Courts Act 10 of 2013 (the Act). An order was made striking the appeal from the roll with costs, including the costs of two counsel. It was stated that reasons for the order would be provided to the parties later. These are the reasons. It is unnecessary to burden these reasons with an account of the litigation preceding the appeal and the issues which are said to be engaged in the appeal.

[2] The hierarchy of our courts is plainly established. This Court is a national appellate court. It hears appeals against judgments of the divisions of the high court. It does so upon the basis set out in s 17 of the Act. The section provides that an appeal from a decision of a single judge of the high court lies to a full court of that division, unless directed otherwise. This is the default position. Thus, a single judge sitting as a court of first instance against whose decision leave to appeal is sought may, in terms of s 17(6) of the Act, only direct otherwise under

circumscribed circumstances. He or she may do so where: (a) the decision to be appealed involves a question of law of importance, whether because of its general application or otherwise, or in respect of which a decision of the Supreme Court of Appeal is required to resolve differences of opinion; or (b) the administration of justice, either generally or in the particular case, requires consideration by the Supreme Court of Appeal of the decision, in which case they must direct that the appeal be heard by the Supreme Court of Appeal.¹ None of these two crucial prerequisites is satisfied in this case. The full court of a division is, therefore, the next highest court above a court comprised of a single judge. This is manifest in the text of the section itself.

[3] Section 18 deals with the consequences of an appeal against a judgment. It provides, in relevant part, that:

‘(1) Subject to subsections (2) and (3), and unless the court under exceptional circumstances orders otherwise, the operation and execution of a decision which is the subject of an application for leave to appeal or of an appeal, is suspended pending the decision of the application or appeal.

...
...

(4) If a court orders otherwise, as contemplated in subsection (1) —
 (i) the court must immediately record its reasons for doing so;
 (ii) the aggrieved party has an automatic right of appeal to the next highest court;
 (iii) the court hearing such an appeal must deal with it as a matter of extreme urgency; and
 (iv) such order will be automatically suspended, pending the outcome of such appeal.’

[4] Subsection (4)(ii) confers an automatic right of appeal to the next highest court. Most recently, in *City of Tshwane Metropolitan Municipality v Vresthena (Pty) Ltd and Others*,² this Court stated that:

¹ See in this regard s 17(6)(a)(i) and (ii).

² *City of Tshwane Metropolitan Municipality v Vresthena (Pty) Ltd and Others* [2023] ZASCA 104 para 15.

‘Considering the context of s 18(4), it is evident that it specifies that an appeal should be made from a single judge to a full court within the same division, as mandated by s 17(6)(a), which designates the next highest court. Consequently, if an order under s 18(1) is granted by a court composed of a single judge, an automatic right of appeal lies with the full court as it is the ‘next highest court’ in the hierarchy, which was the case in the present matter.’

[5] In this case too, the order which was made in terms of s 18(1) of the Act was made by a single judge of the high court. Accordingly, the automatic appeal lies to the full court of the Eastern Cape Division of the High Court. Consequently, this Court does not have the jurisdiction to hear the appeal.

[6] No basis was advanced for why the appellant should not pay the costs that the respondent was compelled to incur because of the prosecution of the appeal before this Court. For the sake of completeness, I repeat the order:

The appeal is struck from the roll with costs, including the costs of two counsel.

G GOOSEN
JUDGE OF APPEAL

Appearances

For the appellant: D Kela and M Sebopa
Instructed by: T Faku Attorneys Inc, Johannesburg
C/o Maduba Attorneys, Bloemfontein

For the 1st to 14th respondents: A M Bodlani SC and L Van Vuuren
Instructed by: Sakhele Incorporated, East London
C/o Eugene Attorneys, Bloemfontein.